

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Stephen Benjamin COURTNEY

Serial No.: 10/523,246

Filing Date: January 27, 2005

For: SURFACE TREATING APPLIANCE

Examiner: Lee D. Wilson

Group Art Unit: 3727

Confirmation No.: 8800

**REQUEST FOR RECONSIDERATION OF PTO CALCULATION OF PATENT TERM
ADJUSTMENT UNDER 35 USC 154(b)(2)(A)**

MS Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant has calculated the patent term adjustment (“PTA”) for this application and has found it to be **1098** days rather than 801 days, as stated on the Notice of Allowance. Referring to the PTO patent term adjustment history in PAIR, a copy of which is attached, the PTO correctly noted that it delayed this application 816 days under 35 USC 154(b)(1)(A) (“subsection A”). However, the PTO does not note that it delayed this application by an additional 282 days under 35 USC 154(b)(1)(B) (“subsection B”), to which Applicant is entitled. Further, the PTO’s reduction of the PTA by 15 days is improper.

Under 35 USC 154(b)(2)(A), to the extent that periods of delay attributable to the grounds specified in subsections A and B overlap, the PTA “shall not exceed the actual number of days the issuance of the patent was delayed.” In *Wyeth v. Dudas*, 88 USPQ.2d 1538 (D.D.C. 2008), the District Court held that periods of delay in subsections A and B overlap only if they

occur in the same calendar day. *Id.* at 1546. Thus, if an application is delayed under subsection B, that delay must be accounted for in addition to any delay attributable to subsection A to the extent that it does not overlap the delay attributable to subsection A.

PTO's delay under subsection B is 427 days as calculated between January 27, 2008 (three years after the filing date) and the March 29, 2009 (the date of the RCE). This delay overlaps with the 816 day delay under subsection A by 145 days as calculated between January 27, 2008 (three years after the filing date) and June 20, 2008 (the date of the first Office Action). Therefore, Applicant is entitled to an additional 282 days in PTA due to PTO delays.

Furthermore, the PTO's reduction of the PTA by 15 days due to Applicant's alleged delay between September 17, 2008 (date of Applicant's response to the Office Action) and October 10, 2008 (date of an IDS) is improper. Applicant's response of September 17, 2008 was timely filed within three months of the mailing date of the Office Action, which is June 20, 2008. Therefore, Applicant's PTA should not be reduced under 35 USC 154(b)(2)(C)(ii). The response is docketed out of order in the PTO patent term adjustment history appearing in PAIR, which may have caused the calculation error.


Accordingly, the PTA should be **1098** days calculated by adding 816 days plus 282 days. Recalculation of the patent term adjustment is respectfully requested.

This request for reconsideration is being filed prior to payment of the issue and publication fees and is accompanied by the fee as set forth in §1.18(e).

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 424662010100.

Dated: June 26, 2009

Respectfully submitted,

By 
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10/523,246 SURFACE TREATING APPLIANCE

06-26-
2009::14:09:23**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/523,246

Filing or 371(c) Date:	01-27-2005	USPTO Delay (PTO) Delay (days):	816
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	15
Post-Issue Petitions (days):	+0	Total PTA (days):	801
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
06-02-2009	Mail Notice of Allowance		
05-14-2009	Information Disclosure Statement (IDS) Filed		
05-03-2009	Document Verification		
05-03-2009	Notice of Allowance Data Verification Completed		
05-03-2009	Case Docketed to Examiner in GAU		
03-23-2009	Date Forwarded to Examiner		
03-23-2009	Date Forwarded to Examiner		
03-09-2009	Request for Continued Examination (RCE)		
03-23-2009	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		
03-10-2009	Workflow - Request for RCE - Begin		
02-10-2009	Mail Examiner Interview Summary (PTOL - 413)		
02-04-2009	Examiner Interview Summary Record (PTOL - 413)		
12-24-2008	Mail Final Rejection (PTOL - 326)		
12-22-2008	Final Rejection		
12-16-2008	Information Disclosure Statement considered		
07-10-2008	Information Disclosure Statement considered		
10-02-2008	Information Disclosure Statement considered		
12-16-2008	Information Disclosure Statement (IDS) Filed		
10-14-2008	Paralegal TD Accepted		
09-17-2008	Terminal Disclaimer Filed		
10-02-2008	Reference capture on IDS		
10-02-2008	Information Disclosure Statement (IDS) Filed		15
10-10-2008	Date Forwarded to Examiner		⬆
09-17-2008	Response after Non-Final Action		⬆
10-07-2008	Case Docketed to Examiner in GAU		
10-02-2008	Information Disclosure Statement (IDS) Filed		
07-10-2008	Reference capture on IDS		
07-10-2008	Information Disclosure Statement (IDS) Filed		
07-10-2008	Information Disclosure Statement (IDS) Filed		
06-20-2008	Mail Non-Final Rejection	816	

06-18-2008	Non-Final Rejection	⌵
01-27-2005	Information Disclosure Statement considered	⌵
05-19-2005	Information Disclosure Statement considered	⌵
08-30-2007	Information Disclosure Statement considered	⌵
10-16-2007	Information Disclosure Statement considered	⌵
02-13-2008	Information Disclosure Statement considered	⌵
05-06-2008	Case Docketed to Examiner in GAU	⌵
04-17-2008	Case Docketed to Examiner in GAU	⌵
02-13-2008	Reference capture on IDS	⌵
02-13-2008	Information Disclosure Statement (IDS) Filed	⌵
02-13-2008	Information Disclosure Statement (IDS) Filed	⌵
10-16-2007	Reference capture on IDS	⌵
10-16-2007	Information Disclosure Statement (IDS) Filed	⌵
10-17-2007	Withdraw Flagged for 5/25	⌵
10-16-2007	Information Disclosure Statement (IDS) Filed	⌵
10-15-2007	Flagged for 5/25	⌵
10-04-2007	Case Docketed to Examiner in GAU	⌵
08-30-2007	Information Disclosure Statement (IDS) Filed	⌵
08-30-2007	Electronic Information Disclosure Statement	⌵
05-29-2007	Case Docketed to Examiner in GAU	⌵
05-19-2005	Reference capture on IDS	⌵
05-19-2005	Information Disclosure Statement (IDS) Filed	⌵
05-19-2005	Information Disclosure Statement (IDS) Filed	⌵
01-27-2005	Request for Foreign Priority (Priority Papers May Be Included)	⌵
01-27-2005	Reference capture on IDS	⌵
01-27-2005	Information Disclosure Statement (IDS) Filed	⌵
01-27-2005	Information Disclosure Statement (IDS) Filed	⌵
01-27-2005	Preliminary Amendment	⌵
07-20-2005	IFW TSS Processing by Tech Center Complete	⌵
07-20-2005	Case Docketed to Examiner in GAU	⌵
06-28-2005	Cleared by OIPE CSR	⌵
01-27-2005	371 Completion Date	⌵
06-03-2005	Application Dispatched from OIPE	
06-06-2005	Notice of DO/EO Acceptance Mailed	
01-27-2005	Initial Exam Team nn	

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